



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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DENVER, CO 80202-2466

Phone 800-227-8917

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September 28, 2004

Ref: 8ENF-W-NP

CERTIFIED MAIL: 7003-2260-0001-7777-1459
RETURN RECEIPT REQUESTED

Mr. Mike Huddleston, Manager
Plains Feeders, Inc.
48529 Road S
Burlington, Colorado 80807

Re: Findings of Fact and Order for
Compliance under the section 309 (a) of the
Clean Water Act, 33 U.S.C. §1319(a)

Dear Mr. Huddleston:

Enclosed is a United States Environmental Protection Agency ("EPA") Region 8 Order for Compliance ("Order") issued to Plains Feeders, Inc. for violations of the federal concentrated animal feeding operation regulations found in 40 C.F.R. § 122.23 and the Feedlots Point Source Categorical Standards regulations found in 40 C.F.R. part 412. The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (the "Act"). The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order, issued after consultation with the Colorado Department of Public Health and Environment ("CDPHE"), describes the actions necessary for Plains Feeders, Inc. to achieve compliance with the Act. Enclosed is also a memorandum from the CDPHE regarding EPA enforcement proceedings in Colorado. The Order requires you to notify EPA, in writing, within five (5) days of receipt whether you intend to comply with the Order. The Order also requires Plains Feeders, Inc. to submit a letter indicating its intent to apply for a National Pollutant Discharge Elimination System ("NPDES") permit to EPA and CDPHE within thirty (30) days of receipt.



The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the Act and any Orders issued thereunder.

Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action, an administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the Act or with an Order issued pursuant to the Act.

Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or initiation of civil or criminal actions in the U.S. District Court under sections 309(b), (c) and (g) of the Act for the violations cited in the Order.

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order.

The Order is to become effective thirty (30) days after receipt. The purpose of allowing this thirty-day period is to provide Plains Feeders, Inc. the opportunity to confer with EPA about the Order. If you would like a conference with EPA, or if you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to Plains Feeders Inc.'s compliance with the Act, the most knowledgeable people on my staff regarding these matters Jennifer Meints, Technical Enforcement, at (303) 312-6334, or Alicia Hoegh, Enforcement Attorney, at (303) 312-6876.

Sincerely,

Aundrey C. Wilkins for/

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Dave A. Akers, CDPHE (w/encl.)
Tom Haren, AGPROfessionals, LLC (w/encl.)



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:

**Plains Feeders, Inc.
48529 Road S
Burlington, CO 80807
Respondent**

)
)
)**DOCKET NO. CWA-08-2004-0072**
)
)**FINDINGS OF VIOLATION**
)**AND CONCLUSIONS OF LAW**
)**& ORDER FOR COMPLIANCE**
)

INTRODUCTION

This administrative order for compliance is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by section 309(a) of the Federal Water Pollution Control Act (often referred to as the Clean Water Act)(“the Act”), 33 U.S.C. § 1319(a), and its implementing regulations, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plains Feeders, Inc. (“Respondent”) is a corporation under the laws of the State of Colorado, with its principal place of business at 48529 Road S in Burlington, Colorado 80807.
2. Respondent is a “person” as that term is defined in section 502(5) of Act, 33 U.S.C. § 1362(5).
3. Respondent owns and/or operates the feedlot at 48529 Road S in Burlington, Colorado. 40 C.F.R. § 122.2.

4. On October 16, 2001, EPA representatives conducted an inspection of Respondent's facility located at 48529 Road S in Burlington, Colorado

5. On the date of the inspection, Mike Huddleston stated to EPA inspectors that the facility confined approximately 15,000 slaughter or feeder cattle for a total of 45 days or more in a 12-month period, and that neither crops, vegetation, forage growth, nor post-harvest residues are sustained during the normal growing season over any portion of the feedlot.

6. On November 25, 2002 Respondent received a request for information dated November 21, 2002, pursuant to section 308 of the Act, 33 U.S.C. § 1318. The purpose of the letter was to obtain information to determine if Respondent was in compliance with the Act. Respondent was required to respond within twenty (20) days of receipt.

7. On February 3, 2003, Respondent received an Opportunity to Confer letter dated January 31, 2003 from EPA for failure to respond to the Request for Information. Respondent was required to respond to the Opportunity to Confer letter by February 21, 2003. Respondent did not respond to either the Request for Information or the Opportunity to Confer letter.

8. On September 24, 2003, Respondent received an Order for Compliance. The Order was filed on September 9, 2003 to obtain information to determine if Respondent was in compliance with the Act.

9. On November 10, 2003, Respondent replied to the Order for Compliance. In the reply, Respondent certified that its facility confines approximately 15,000 slaughter of feeder cattle for a total of 45 days or more in a 12-month period where neither crops, vegetation, forage growth or post-harvest residues are sustained during the normal growing season over any portion of the feedlot.

10. On June 1, 2004, Respondent received a request for information dated May 28, 2004, issued pursuant to section 308 of the Act, 33 U.S.C. § 1318. The purpose of the letter was to obtain information to determine if Respondent was in compliance with the Act.

11. On June 11, 2004, Respondent replied to the request for information. In the reply, Respondent certified its facility has capacity for approximately 12,000 head of feeder cattle and at the time had approximately 8,000 head of cattle at the facility. Respondent also stated it was in the process of submitting its CDPHE CAFO permit in 30 days.

12. Under 40 C.F.R. § 122.23(b)(4), any lot or facility where more than 1000 mature beef cattle have been, are, or will be stabled or confined and fed or maintained for at least 45 total days in any 12-month period, and where crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing period over any portion of the lot or facility is a “Large CAFO” or “large concentrated animal feeding operation.”

13. Respondent’s feedlot is a CAFO and a Large CAFO, as those terms are defined in 40 C.F.R. § 122.23(b)(2) and (4).

14. Pursuant to 40 C.F.R. § 122.23(a), any facility meeting the definition of a CAFO set forth in 40 C.F.R. § 122.23(b) is a point source that requires a National Pollutant Discharge Elimination System (NPDES) permit pursuant to section 402 of the Act, 33 U.S.C. § 1342 for discharges or potential discharges.

15. The term “discharge” is defined in 40 C.F.R. § 122.2 as the “discharge of a pollutant,” which in turn is defined in 40 C.F.R. § 122.2 and section 502(12) of the Act, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.

16. The term “pollutant” includes agricultural waste, according to section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

17. The term “navigable waters” is defined as the waters of the United States, according to section 502(7) of the Act, 33 U.S.C. § 1362(7).
18. The term “waters of the United States” is defined to include various types of waters including, but not limited to, interstate waters, their tributaries, and wetlands adjacent to either interstate waters or their tributaries. 40 C.F.R. § 122.2.
19. Sand Creek is located adjacent to the Respondent’s facility, along its north side.
20. Sand Creek is a tributary of the Republican River.
21. The Republican River is an interstate waterway.
22. Sand Creek is a “navigable water” and a “water of the United States” as those terms are defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
23. The Republican River is a “navigable water” and a “water of the United States” as those terms are defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
24. 40 C.F.R. § 122.21(a)(1) states in part that, “all concentrated animal feeding operations have a duty to seek coverage under an NPDES permit, as described in [40 C.F.R. § 122.23(d)].”
25. Pursuant to 40 C.F.R. § 122.23(d)(1), “all CAFO owners or operators must seek coverage under an NPDES permit, except as provided in [40 C.F.R. § 122.23(d)(2)]. Specifically, the CAFO owner or operator must obtain permit coverage by either applying for an individual NPDES permit or submitting a notice of intent for coverage under an NPDES general permit. If the [permitting agency] has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the [permitting agency].”
26. The NPDES permitting agency for the State of Colorado is the Colorado Department of Public Health and Environment (“CDPHE”). (See 40 Fed. Reg. 16713, April 14, 1975.)

27. Respondent failed to apply to CDPHE for an NPDES permit for its feedlot.
28. CDPHE has not issued an NPDES permit for the Respondent's feedlot.
29. Respondent's failure to apply for an NPDES permit is a violation of 40 C.F.R. §§ 122.21(a)(1) and 122.23(d)(1).
30. Respondent's failure to apply for an NPDES permit and/or submit information required from NPDES permit applicants under 40 C.F.R. § 122.23(a) and 122.23(d)(1), is a violation of section 308 of the Act, 33 U.S.C. § 1318.

COMPLIANCE ORDER

Pursuant to the authority of sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, Respondent is ordered to:

1. Within five (5) days after receipt of this Compliance Order ("Order"), give written notice to EPA and CDPHE of the Respondent's intent to comply with the requirements of the Order.
2. Immediately conduct daily visual monitoring of all potential sources of pollutant discharges to navigable waters from the CAFO. Monitoring locations shall include, but are not limited to, areas with direct access of dairy cattle to any surface waters, areas of potential or actual discharges from fields subject to land application of wastes, confinement areas, silage piles, or waste storage ponds.
3. Immediately develop and maintain a monitoring log containing the following information for each area monitored as stated in the preceding paragraph: the date and time of the visual observation, an indication of whether or not a discharge was observed, and the initials of the person making the observation. Respondent shall maintain the monitoring records at the CAFO for at least three (3) years after the date of this Order and make them available for inspection or

copying upon request by an authorized representative of EPA or the State. The operator of the CAFO subject to this Order shall know the location of the records.

4. Immediately conduct daily monitoring of precipitation using a rain gauge. The precipitation should be recorded and maintained with the monitoring records.
5. For each observed discharge of any agricultural waste or other pollutant(s) from its feedlot that may enter Sand Creek or any other navigable water, Respondent shall:
 - a. Within two (2) hours of the discharge, sample the discharge in accordance with the methods specified in 40 C.F.R. part 136, and submit the sample to a laboratory to be analyzed in accordance with the sample holding times and methods of analysis specified in 40 C.F.R. part 136 for fecal coliform, 5-day Biochemical Oxygen Demand (BOD₅), Ammonia, Nitrate-Nitrite, and Total Suspended Solids;
 - b. Submit to EPA and CDPHE within fifteen (15) days of the discharge a written report containing:
 - 1) date and time of the discharge;
 - 2) location of the discharge;
 - 3) origin of the discharge;
 - 4) estimated volume of discharge;
 - 5) daily rainfall measurements for 30-days prior to the discharge event;
 - 6) sample analysis results of the discharge;
 - 7) steps taken to prevent reoccurrence of the discharge.
6. Within thirty (30) days from receipt of this Order, submit a letter to EPA and CDPHE indicating Respondent's intent to apply to CDPHE for an NPDES permit for the CAFO.
7. Within thirty (30) days from receipt of this Order, submit to EPA and CDPHE a report of the Respondent's progress to date in taking the actions necessary to submit a complete application to CDPHE for an NPDES permit for the CAFO.

8. Within thirty (30) days from receipt of this Order, submit to EPA and CDPHE a compliance schedule. The compliance schedule shall include all necessary remaining actions the Respondent must take to submit a complete application to CDPHE for an NPDES permit for the CAFO, and the date by which each action will be taken, including the date by which the complete application will be submitted. For any necessary construction, the schedule is to include:
- 1) the date plans will be completed;
 - 2) the date construction will begin;
 - 3) the date construction will be 50% complete;
 - 4) the date construction will be complete.
9. The compliance schedule will be incorporated into this Order upon its approval by EPA (with or without modifications).
10. Submit to EPA and CDPHE monthly reports of its efforts to achieve compliance with this Order, postmarked by the 10th day of every month, until EPA notifies the Respondent, in writing, that this Order has been closed. The reports shall include an update on the progress of the construction of the containment facility and local rainfall amounts for the previous month.

CONTACTS FOR SUBMISSIONS

Submissions required by this Compliance Order shall be sent to:

U.S. Environmental Protection Agency
Region 8 (8ENF-W-NP)
999 18th Street, Suite 300
Denver, CO 80202-2408
Attn: Jennifer Meints

Colorado Department of Health
and Environment (W-P-B2)
4300 Cherry Creek Drive South
Denver, CO 80246-1530
Attn: Ron Jepson

RESERVATION OF RIGHTS

Nothing in this Order shall be construed to relieve Respondent of the requirement to obtain and comply with any NPDES permit or other applicable requirements of other federal,

state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any other legal requirement.

Violation of this Order, failure to submit the required information, or making a false statement under section 308 of the Act, may be punishable by the imposition of a fine and/or imprisonment, and/or a civil action for appropriate relief in the district court of the United States, including a permanent or temporary injunction.

The effective date of this Order shall be the date of receipt by Respondent.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date: 9/28/04

Aundrey C. Wilkins for/
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON September 28, 2004.